

May 11, 2017

**VIA ELECTRONIC FILING**

Ms. Jocelyn Boyd  
Chief Clerk & Administrator  
Public Service Commission of South Carolina  
Synergy Business Park, Saluda Building  
101 Executive Center Drive, Suite 100  
Columbia, SC 29210

**Re: Docket No. 2016-390-C, Petition of United Telephone Company of the Carolinas, LLC d/b/a CenturyLink, Frontier Communications of the Carolinas, Inc. and Dex Media, Inc. for Full or Partial Waiver of Directory Requirements of SC Regulation 103-631.**

Dear Ms. Boyd:

The South Carolina Telephone Coalition (the "SCTC") in its comments references Section 103-631 of the South Carolina Public Service Commission's (the "Commission") regulations, but does not mention federal law obligations affecting directory publishing and distribution. Dex Media contends that the issues raised by Charter Fiberlink SC CCO, LLC ("Charter") are outside the scope of the Order and the workshop scheduled for May 24, 2017. In response to the SCTC and Dex Media, Charter submits these reply comments.

The issues that Charter has raised are within the scope of the Order because they concern the publication and distribution of directories, and are within the scope of the workshop because the Commission states that "changes in the telephone industry warrant a broader examination of its directory publishing and distribution requirements."

The principal federal obligation affecting directories is established by 47 U.S.C. § 251(b)(3), which states:

The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

Section 251(b)(3) places the obligation of “to permit[ting] . . . nondiscriminatory access to . . . directory listing[s]” on local exchange carriers generally.<sup>1</sup>

The FCC has determined that “nondiscriminatory access” to directory listings includes both: “(1) nondiscrimination between and among carriers in rates, terms and conditions of access; and (2) the ability of competing providers to obtain access that is at least of equal quality to that of the providing LEC.”<sup>2</sup> An ILEC must accept the directory listings provided by CLECs, on equal terms as the ILEC provides for its own customers, and publish them in the ILECs’ phone directories.<sup>3</sup>

Further, the FCC has clarified that the directory listing obligation of 47 U.S.C. § 251(b)(3) “is most accurately reflected by . . . defin[ing directory listing] as a verb that refers to the act of placing a customer’s listing information in a directory assistance database or in a directory compilation for external use (such as white pages).”<sup>4</sup> The FCC has also concluded that publication applies to directories

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<sup>1</sup> *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392, 19402 (para. 12) (Aug. 8, 1996) (*Local Competition Order*).

In addition, 47 U.S.C. § 222(e) states, in relevant part:

[A] telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

(Footnote added.) A local exchange carrier is a “telecommunications carrier that provides telephone exchange service.” 47 U.S.C. § 222(h)(3) defines subscriber list information as:

any information—

(A) identifying the listed names of subscribers of a carrier and such subscribers’ telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers,

addresses, or classifications; and

(B) that the carrier or an affiliate has published, *caused to be published*, or accepted for publication in any directory format.

(Emphasis added.)

<sup>2</sup> *Local Competition Order* at paras. 12, 101 and 102.

<sup>3</sup> *U.S. West Comm., Inc. v. Hix*, 93 F. Supp. 2d. 1115 (D. Colo. 2000).

<sup>4</sup> *In Re Implementation of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, para. 160 (Sep. 9, 1999).

published in any format, including online, and has said that a directory is published online when Internet users are able to access it.<sup>5</sup>

Dex Media appears to confuse a local exchange carrier's obligation to provide access to directory information, pursuant to 47 U.S.C. § 222(e), with the obligations established by 47 U.S.C. § 251(b)(3). Nevertheless, Dex Media accurately states that CLECs traditionally have relied on contractual agreements with ILECs to arrange for publication of directory listings as well as for directory distribution. CLECs typically have entered into interconnection agreements with ILECs, pursuant to which ILECs have published competitive providers' subscriber list information and distributed white pages directories, free of charge to covered customers, in the same manner and at the same time that such directories are delivered to the ILECs' customers.

However, in addition to increasing mobile wireless subscriptions, two industry trends are emerging that affect directories. First, ILECs have delegated their directory publishing and directory listings obligations to third parties. Federal court decisions hold that while a telecommunications carrier may contract with a third party to facilitate compliance with directory obligations under 47 U.S.C. § 251(b)(3), the use of a third party does not relieve the carrier of those obligations.<sup>6</sup> Specifically, when a third party acts as the agent of a local exchange carrier "the agent assumes the legal obligations of the carrier under the nondiscrimination provisions of the Act."<sup>7</sup> Therefore, a local exchange carrier must comply with the nondiscriminatory access requirements of section 251(b)(3) whether acting on its own behalf or acting through an agent. These principles prevent harm to consumers and protect the public interest in maintaining a competitive environment for voice services throughout South Carolina. Accordingly, where Dex Media publishes an ILEC's subscriber information in a digital format, including online, Dex Media should also publish a competitive provider's subscriber list information to the same extent, pursuant to an interconnection agreement with the ILEC or a listing agreement between Dex Media and the competitive provider.

Second, ILECs and their directory publishers are transitioning to electronically available directories – the primary subject of this proceeding. The transition potentially raises the question of whether ILECs and their third party publishers might treat competitive providers' customers differently from ILEC customers with respect to on-line directories. Charter is concerned that

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<sup>5</sup> See *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, First Report and Order, 16 FCC Rcd 2736, 2739 (para. 4) (Jan. 23, 2001); *id.* at 2755 (para. 42).

<sup>6</sup> *MCI Telecomm. Corp. v. Michigan Bell Tell. Co.*, 79 F. Supp. 2d 768 (E.D. Mich. 1999).

<sup>7</sup> *LSSi Data Corp. v. Comcast Phone, LLC*, 696 F.3d 1114, 1120 (11th Cir. 2012); See *Hix*, 93 F. Supp. 2d at 1132-1133.

discriminatory effects could occur if competitive providers were denied publication of directory listings on the same terms as ILECs. ILECs or their publishers might charge a discriminatory rate for the publication of other carriers' customer listings and gain an unfair competitive advantage as a result.<sup>8</sup> ILECs or their publishers also might use a waiver of directories distribution as a marketing opportunity to influence customers' choice of providers where customers of competitive providers must contact the ILEC to receive a print directory.

Faced with similar issues, other state commissions have: (1) required access by CLEC customers to directories, free of charge; (2) established a process for the acceptance of electronic files from competitive carriers identifying customers requesting printed directories, and (3) prohibited the marketing of non-directory related services to customers requesting directories.<sup>9</sup> It is essential that the Petitioners in this proceeding likewise maintain nondiscriminatory arrangements in the publication of directories, listing competitive providers' subscriber information, and distribution of directories on request and at no charge to competitive providers' customers.

Yours truly,



Frank R. Ellerbe, III

cc: Kennard B. Woods, Esquire  
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<sup>8</sup> *Hix*, 93 F. Supp. 2d. at 1132.

<sup>9</sup> See, e.g., Rule 515-12-1-10 (Directories.), Ga. Admin. Code; *In the matter of Southwestern Bell Telephone Company, d/b/a AT&T Missouri's Application for Waiver of the General Distribution Requirement of White Pages Directories Under 4 CSR 240-32.050(4)(B)*, Order Approving Unanimous Stipulation and Agreement, Case No. IE-2009-0357, Mo.P.S.C. (2009); and *Petition of Verizon New York Inc. for Waiver of New York Code of Rules and Regulations, Title 16, § 602.10(b) Pertaining to the Distribution of Telephone Directories*, Order Granting Waiver with Conditions, Case No. 10-C-0215, N.Y.P.S.C. (2010). See *Qwest Corporation d/b/a CenturyLink, QC, and Dex Media, Inc. Petition for Full or Partial Waiver of Commission Directory Rules*, Stipulation and Partial Settlement Agreement, Docket No. D.2016.8.64, Mont.P.S.C. (2016) (access by CLEC customers to directories, free of charge, and no marketing of non-directory related services to customers requesting directories). In addition, Charter has entered into stipulations with ILECs that were not subject to state commission approval but encompass similar terms and conditions.